IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2806 OF 2004

C. M. Vidyashankar ..Petitioner.

Vs.

M/s. Larsen and Toubro Limited & Ors. ..Respondents.

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Mr. A.D. Shetty with Ms. Rita Joshi for the Petitioner.
Mr. S.K. Talsania, Senior Advocate with Mrs. Shakuntala Joshi for the Respondents.

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CORAM: DR. D.Y. CHANDRACHUD, J.

30th November, 2006.

P.C. :

1. The dispute in the present case relates back to the year 1988. It was over 18 years ago that the Petitioner tendered his resignation from service on 28th October, 1988. The resignation was to take effect at the end of the notice period and was withdrawn on 1st November, 1988. The case of the management is that the resignation was accepted immediately and that a letter dated 1st November, 1988 was thereupon sent to the workman accepting the resignation. The case of the workman is that the letter was posted on 14th November, 1988 and was received by him on 20th November, 1988 by which time the resignation had already

been withdrawn. A complaint of unfair labour practices was filed before the Industrial Court on 18th December, 1991 about three years after the incident had taken place. The complaint was dismissed by the Industrial Court. The Industrial Court overruled the contention of the management that the Petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The objection to the jurisdiction of the Industrial Court on the ground that the complaint pertained to the jurisdiction of the Labour Court since it was in substance under item 1 of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 was similarly rejected. The complaint was, however, dismissed on merits. This Petition was admitted on 16th October, 2004.

2. When the Petition came up for final hearing, learned counsel appearing for the parties fairly stated before the Court that though offers for a final settlement were exchanged before the Industrial Court, no settlement was then possible. During the pendency of the proceedings, the Petitioner attained the age of superannuation on 8th July, 1996. The only surviving issue on the merits therefore pertained to the question of backwages. On the

suggestion of the Court, the learned counsel have fairly discussed the matter, with a view to amicably resolving the dispute, at length in the presence of the Petitioner and the authorized representative of the Respondents. The dispute between the parties has considerably narrowed down. The Respondent has offered to the Petitioner a final settlement of Rs.5.50 lacs inclusive of gratuity. Counsel appearing for the Petitioner had stated that the Petitioner would desire an offer of settlement at Rs.6 lacs, but in view of the approach set up by the management, he would leave the final figure to a suggestion of the Court. In order break the impasse the Court had enquired with counsel appearing for the management whether the management would be willing to increase the offer to Rs.5.65 lacs as a final settlement. The authorized representative of the Respondent – management who is present before the Court has taken telephonic instructions on the direction of the learned senior counsel and the Court has been informed that in view of the suggestion of the Court and with a view to finally settle the long standing dispute the management accepts the figure of Rs.5.65 lacs as a full and final settlement. Counsel appearing for the Petitioner has fairly stated on behalf of the Petitioner that the dispute may be accordingly be regarded as

settled on the figure of Rs.5.65 lacs indicated by the management. The aforesaid background has been specifically adverted to in the order of the Court on the request of the learned counsel appearing for the contesting parties so as to emphasise that the dispute has been settled after a considerable degree of negotiations and with the full consent of the parties .

3. Accordingly by consent the order of the Industrial Court dated 10th March, 2004 shall stand substituted by a direction to the effect that the Respondent – management shall pay to the Petitioner an amount of Rs.5.65 lacs within a period of two weeks from today in full and final settlement of all the claims, dues and outstandings of the Petitioner including gratuity. Complaint ULP 1749 of 1991 shall accordingly stand disposed of in the light of the aforesaid directions. There shall also be a direction to the effect that the Petitioner would be entitled to such spread over for the purpose of income tax as is otherwise admissible in accordance with law.

4. Counsel appearing for the Petitioner has required the Court to record that the Petitioner is present before the Court and

that counsel has agreed to the settlement on instructions of the Petitioner. The Petition is accordingly disposed of.